Supreme Court, U.S.
FILED
APR 22 2003
CLERK

No. 02-1205

In the
Supreme Court of the United States

EDITH JONES, ET AL., ON BEHALF OF HERSELF AND A CLASS OF OTHERS SIMILARLY SITUATED,
Petitioners,

v.

R.R. DONNELLEY & SONS COMPANY,
A DELAWARE CORPORATION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

REPLY BRIEF IN SUPPORT OF PETITION

H. CANDACE GORMAN
Counsel of Record
CATHERINE CAPORUSSO
LAW OFFICE OF H. CANDACE GORMAN
542 S. DEARBORN
SUITE 1060
CHICAGO, IL 60605
(312) 427-2313

Counsel for Petitioners

BECKER GALLAGHER LEGAL PUBLISHING, INC.,
CINCINNATI, OHIO 800-890-5001

5 pp

1. Review of this issue is not premature

Respondent argues that this Court should not review Petitioners Writ of Certiorari firstly, because all of the Circuits have not weighed in on the issue[1] and secondly, because there are issues that the District Court still needs to rule on. These arguments are specious because respondent took the exact opposite position when seeking to certify this same question for appeal to the Seventh Circuit. The overwhelming rationale for granting the Writ is to put the question regarding the correct statute of limitations under section 1981 of the 1991 Civil Rights Act to rest, allowing Plaintiffs and Defendants across the country to stop litigating the time consuming and costly limitations issue and instead focus on the merits of the cases. As there is already a split in the circuits regarding this issue it is ripe for consideration by this Court.

In Respondent's "Motion to Certify Issue for Appeal" (before the District Court) respondent argued "this court's decision creates a split within this circuit, and it would be a further waste of scarce judicial resources for every district judge to decide the issue independently and (given the obvious differences of opinion so far) for at least some cases to require remand and retrial...." Now Respondent wants every circuit to decide the issue independently before the Supreme Court takes up the issue. In that same motion, Respondent also argued "resolution of the limitations period at this stage would therefore serve the dual purposes of judicial economy

---

[1] *Abazly v. Pinnacle Nissan, Inc,* cited by Respondent as pending in the 9th Circuit was voluntarily dismissed by the parties on April 4th 2003 and therefore is no longer pending. The 5th Circuit cases cited by Respondent were argued six months ago and a decision is imminent.

and timely disposition of the central aspect of this litigation." Respondent obviously did not think it was premature for the Seventh Circuit to rule on the issue when it was Respondent who sought the appeal and Respondent did not ask the District Court to rule on any outstanding issues prior to seeking the District Courts certification of the question for review. Respondent's argument, which directly contradicts the arguments made by it to the District Court and the Seventh Circuit, should be given no weight.

2. Developments in this Court and in the lower courts since the filing of the Petition for Writ emphasize the importance of granting the Writ

In *Branch v. Smith* 2003 WL 1611449 (March 31, 2003) this Court again emphasized that "the most rudimentary rule of statutory construction...that courts do not interpret statutes in isolation, but in the context of the corpus juris of which they are a part, including later-enacted statutes". Because sections 1981 (a) and (b) of the 1991 Civil Rights were clearly intended as a substitute to the reconstruction era's Section 1981, the Seventh Circuit's interpretation is flawed and contrary to the long established canons of statutory construction reiterated by this Court. This approach clearly conflicts with this Court's rules of statutory construction as clarified in *Branch,* which makes clear that the laws should be read *in pari materia*. As discussed in Section 3 (n.1) of Plaintiffs' Writ the consequences of the statutory construction laid out in the Seventh and Third Circuits opinions will render Section 1658 a dead letter.

Although Petitioners question is limited to the application of Section 1658 to 42 U.S.C. § 1981, this Court's interpretation of that question will be guiding on other areas of the law. Despite respondent's assertions to the contrary

this is not a hypothetical argument. Since filing the Writ of Certiorari at least one additional statute has come under fire regarding the application of Section 1658 on statutes that have "their roots" in statutes that existed prior to the enactment of Section 1658. In *Rogers v. City of San Antonio* 2003 WL 1566502 (March 4, 2003) the district court found that the four year statute of limitations applied in cases filed under the Uniform Services Employment and Reemployment Rights Act of 1994 ("USERRA"), 38 U.S.C. § 4301, *et seq*.[2] Despite the fact that USERRA had it's roots in a previous law (VRAA) the District Court in *Rogers* (*Supra* at *7) rejected the statutory construction espoused by the Third and Seventh Circuits and found that the four year statute did apply to that amended statute.

In contrast, a recently published decision[3] out of the Eastern District of Tennessee found exactly the opposite in yet another USERRA case. In, *AKHDARY v. CITY OF CHATTANOOGA* 2002 WL 32060140 (May 22, 2002) that Court held that Section 1658 did not apply to Akhdary's

---

[2] Similar to the Civil Rights Act of 1991, USERRA was the amended version of VRAA and was enacted by Congress in response to the United States Supreme Court decision in *Monroe v. Standard Oil* Co 452 U.S. 549 (1981). In the *Monroe* case, this Court found that the Vietnam Era Veterans' Readjustment Assistance Act of 1974, USERRA's predecessor statute, "was enacted for the significant purpose of protecting the employee/reservist against discrimination like discharge and demotion, motivated *solely* by reserve status." Thus, through the enactment of USERRA and specifically section 4311, Congress repealed the "sole cause" standard enunciated in *Monroe,* insisting instead on the "motivating factor" standard.

[3] This decision was actually handed down in May 2002 but not published by Westlaw until March 2003.

claims under USERRA. Relying on." *Zubi v. AT & T Corp.*, 219 F.3d 220, 225 (3d Cir.2000) the District Court found that Section 1658 did not apply because USERRA did not establish a new cause of action but instead, amended the preexisting law of the VRRA.

CONCLUSION

For the reasons set forth in Petitioners Petition for Writ of Certiorari and in this Reply and for such other reasons as this Court deems just and appropriate, Petitioners ask this Court to grant their petition for a Writ of Certiorari and find that the four-year statute of limitations set forth in 28 U.S.C. § 1658 applies to Section 1981 of the Civil Rights Act of 1991 and for such other and further relief as this Court deems just.

Respectfully Submitted,

H. Candace Gorman
Catherine Caporusso
Law Office of H. Candace Gorman
542 S. Dearborn, Suite 1060
Chicago, IL 60605
312.427.2313

Counsel for Petitioner